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July 19, 2005

**DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS**

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Date of Filing: March 29, 2005

Case Number: TSO-0214

This Decision concerns the eligibility of XXXX XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."^{1/} A Department of Energy (DOE) Operations Office suspended the individual's access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be restored. As set forth in this Decision, I have determined that the individual's security clearance should be restored.

I. Background

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger

^{1/} An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

In this instance, the individual was granted a security clearance from DOE after gaining employment with a DOE contractor. However, the local DOE security office (DOE Security) initiated formal administrative review proceedings by informing the individual that his access authorization was being suspended pending the resolution of certain derogatory information that created substantial doubt regarding his eligibility. This derogatory information is described in a Notification Letter issued to the individual on November 8, 2004, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections h, j and l. More specifically, the Notification Letter alleges that the individual: 1) "has an illness or mental condition which in the opinion of a psychiatrist causes, or may cause, a significant defect in judgment and reliability of [the individual]; 2) "is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse,"and 3) "has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation, or duress which may cause him to act contrary to the best interests of national security." 10 C.F.R. §§ 710.8(h), (j) and (l) (Criterion H, Criterion J and Criterion L, respectively). The bases for these findings are summarized below.

With regard to Criterion H, the Notification Letter states that on June 17, 2004, the individual was evaluated by a DOE consultant-psychiatrist (DOE Psychiatrist) who diagnosed the individual with Antisocial Personality Disorder. According to the DOE Psychiatrist's report, this is a mental condition that causes or may cause a significant defect in the individual's judgment or reliability. Also citing the DOE Psychiatrist's report, the Notification Letter alleges with regard to Criterion J that the individual has been a user of alcohol habitually to excess and suffered from alcohol abuse, and that there is not adequate evidence of rehabilitation or reformation. Finally, referencing Criterion L, the Notification Letter states that the individual was arrested for assault on October 29, 2003.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on March 29, 2005, the individual exercised his right under Part 710 to request a hearing in this matter, 10 C.F.R. § 710.21(b), and on March 31, 2005, I was appointed as Hearing Officer. After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, a hearing date was established. At the hearing, the DOE Counsel called the DOE Psychiatrist as its sole witness. Apart from testifying on his own behalf, the individual called as witnesses his wife, his stepson, his plant psychologist, his counselor (Counselor), a close friend and a co-worker. The transcript taken at the hearing will be hereinafter cited as "Tr.". Various documents that were submitted by

the DOE Counsel will be cited as "DOE Exh." and those submitted by individual cited as "Ind. Exh."

Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual accepted a position with a DOE contractor in 1994, and was granted a security clearance in 1995. The individual maintained his security clearance without incident until September 2003, when the individual reported to his employer that he had been arrested on assault charges. The arrest stemmed from an altercation that the individual had with his wife on September 7, 2003. The circumstances of the arrest are described generally below.

During 2003, the individual and his wife had temporarily taken custody of their three minor grandchildren. On the day of the his arrest, the individual's grandson was spending the day with his father and began to experience asthma symptoms. The grandson's father called the individual who, in turn, called his wife and instructed her to take the grandson's inhaler to the father's residence. The individual became enraged when, in the individual's perception, his wife unreasonably delayed in following his instruction. The individual drove to the father's home and confronted his wife after she had begun to drive away. The individual grabbed and pulled his wife's arm through the car window, causing injury. The wife told her friend, riding with her, to call the police. The individual left the scene but was later met at his home by the police who took a report of the incident. Pursuant to the incident, the individual and his wife separated and she later filed for divorce. The individual's wife elected not to file charges against the individual for the assault. Nonetheless, on September 23, 2003, the county prosecutor issued a warrant for the individual's arrest on a charge of Assault Causing Bodily Injury/Family Violence. The individual pled guilty and was given a deferred sentence, placed on probation for one year, ordered to pay a \$500 fine and required to complete Batterers Intervention and Prevention Program classes.

Within a few days following the altercation with his wife, the individual reported the incident to his plant psychologist. According to the individual, he went to the plant psychologist on his own volition because he recognized that he needed help controlling his anger. The plant psychologist notified DOE Security of the individual's arrest and referred the individual to his Employee Assistance Program (EAP) counselor who began seeing the individual on a weekly basis. During these sessions, the individual discussed his history of angry outbursts which included several fights while in high school, physical altercations with his first wife (his first marriage ended in divorce in 1979), several incidents of road rage, and physical and verbal altercations with his wife

culminating with the assault arrest in September 2003. The individual's handwritten notes to the EAP counselor state that in one incident with his first wife the individual pushed her against a wall with such force that her head broke the sheet rock. The individual also described an incident in which he became angry with his second wife for excessive spending and drove her to a secluded place where he threatened to shoot her with a gun he had in the vehicle. The individual also revealed that he had a history of heavy alcohol use prior to coming to work for the DOE contractor in 1994. The EAP Counselor's sessions with the individual primarily focused on anger management techniques. The EAP Counselor decreased the individual's sessions with her from weekly to bi-weekly after one month, and then to once monthly in early 2004.

DOE conducted a Personnel Security Interview (PSI) with the individual on November 19, 2003. During the PSI, the individual described the circumstances leading to his arrest on the domestic assault charge and his history of alcohol use. The individual stated that during the months leading up to the September 2003 assault, he was experiencing stress associated with raising his three grandchildren and he would often stop at his lodge for a few beers before coming home. The individual conceded that his wife had difficulty with his coming home late after drinking at the lodge, and verbal confrontations sometimes ensued. The individual had not been drinking prior to the assault incident on September 7, 2003. However, after giving a statement to the police, he went to the lodge and drank to the point of intoxication. The individual stated that he had not consumed any alcohol since that time.

In June 2004, the individual was referred by DOE Security to the DOE Psychiatrist who examined pertinent portions of the individual's security file, including the EAP counselor's records, and then conducted a psychiatric interview of the individual. During the interview, the individual again described his history of angry outbursts and his past drinking habits. In the latter regard, the individual admitted that he drank heavily while in his early 20's around the time of his divorce from his first wife in 1979, and that he continued to abuse alcohol on occasion until 1994 when he came to work for the DOE contractor. The individual had a heart attack in 1999, and reported that he had reduced his drinking to no more than two drinks a day, usually beer, except on holidays. The individual stated that he had remained abstinent from alcohol since September 7, 2003, the date of the assault incident on his wife.

In her report dated June 28, 2004, the DOE Psychiatrist diagnosed the individual with two mental conditions, Alcohol Abuse in Sustained Full Remission, and Antisocial Personality Disorder, based upon diagnostic criteria set forth in the *Diagnostic and Statistical Manual of the American Psychiatric Association, I V Edition Text Revision (DSM-IV TR)*. The DOE Psychiatrist further states in her report that, while the individual does not manifest symptoms of Alcohol Abuse at the present time, his past history of alcohol use coupled with his Antisocial Personality Disorder present a "moderate risk" of causing a significant defect in his judgment and reliability. As

adequate evidence of rehabilitation or reformation from his alcohol abuse, the DOE Psychiatrist recommended: (1) satisfactory completion of minimum of 50 hours of a professionally-led substance abuse treatment program, with aftercare, for a minimum of six months, and complete abstinence from alcohol for an additional six months, or (2) if he chooses not to attend this rehabilitation program, two years of absolute sobriety.

Although the individual and his wife separated following the September 2003 assault, they reconciled in late 2003 and began seeing each other on a daily basis, having dinner together most evenings. In early 2004, the individual and his wife began attending marriage counseling at their church, focusing on spousal understanding and communication. The individual and his wife continued in these church counseling sessions for six to eight months. At the same time, the individual continued to see his EAP counselor on a monthly basis, and completed the Batterers Intervention and Prevention (BIP) Program classes ordered by the court as a condition of his probation. The BIP classes met weekly for 24 weeks. Records provided to DOE Security indicate that the individual successfully completed the BIP classes in June 2004. The individual's monthly sessions with the EAP counselor ended in September 2004. However, the individual immediately began sessions with his present Counselor, on a bi-weekly basis for the first three months and on a monthly basis since that time. The individual and his wife reunited and resumed living together in October 2004.

II. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. *See Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should be restored since I conclude that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

A. Criteria H & J; Mental Conditions, Use of Alcohol

(1) Derogatory Information

Based upon the diagnoses of the DOE Psychiatrist, I find that DOE Security properly invoked Criteria H and J in suspending the individual's security clearance. In her report, the DOE Psychiatrist diagnosed the individual with Alcohol Abuse in Sustained Full Remission, and Antisocial Personality Disorder (ASPD), based upon diagnostic criteria set forth *DSM-IV TR*. DOE Exh. 2-1 at 13-17. In other DOE security clearance proceedings, Hearing Officers have consistently found that a diagnosis related to excessive alcohol use raises important security concerns. *See, e.g., Personnel Security Hearing*, Case No. VSO-0079, 25 DOE ¶ 82,803 (1996) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0014, *aff'd*, *Personnel Security Review*, 25 DOE ¶ 83,002 (1995) (affirmed by OSA, 1995). As observed in these cases, an individual's excessive use of alcohol might impair his judgment and reliability, and his ability to control impulses. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. *Id.*

Similarly, we have observed in cases involving a diagnosis of ASPD that this mental condition portends a significant defect in judgment and reliability, and can manifest itself in illegal behavior on the part of the individual. *See, e.g., Personnel Security Hearing*, Case No. VSO-0073, 25 DOE ¶ 82,794 (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0279, 27 DOE ¶ 82,825 (1999) (affirmed by OSA, 2000). Accordingly, I will turn to whether the individual has presented sufficient evidence of rehabilitation or reformation to mitigate the security concerns of DOE.

(2) Mitigating Evidence

While the DOE Psychiatrist found in her report that the individual's alcohol abuse is in "sustained full remission," she linked the individual's alcohol use to his ASPD in concluding that the individual yet has a significant defect in judgment and reliability, stating: "Although he does not manifest symptoms of Alcohol Abuse at the present time, his past history of it coupled with an Antisocial Personality Disorder that has been known to poorly respond to treatment, makes him a continuing potential concern. Within the ranges of mild, moderate, and high risk of his condition (antisocial personality disorder and history of substance abuse) causing a significant defect in judgment or reliability, I will consider him to be a moderate risk at this point." DOE Exh. 2-1 at 18-19. The DOE Psychiatrist recommended as adequate evidence of rehabilitation or reformation that the individual complete a six-month alcohol treatment program with one year of sobriety, or two years of sobriety in the absence of a treatment program. DOE Exh. 2-1 at 18.^{2/} While her recommendation would appear to relate solely to the individual's alcohol abuse, the DOE Psychiatrist clarified during the hearing that she was recommending these same alternatives to address the individual's ASPD. Tr. at 134-35.

At the hearing, the individual testified that he has consumed no alcohol since the day he assaulted his wife in September 2003. Tr. at 62, 72. According to the individual, he went to his lodge and got drunk but decided when he got home that evening that "you don't have any business drinking until you get your life in order." Tr. at 49. The individual's wife, close friend, co-worker (who also socializes with the individual) and stepson all corroborated the individual's testimony that he has remained abstinent since September 2003. *See* Tr. at 21, 78, 85, 116. The DOE Psychiatrist believed this testimony and accepted that the individual had been abstinent for 20 months at the time of the hearing. Tr. at 135. Nonetheless, the DOE Psychiatrist stated her opinion that the individual has not yet demonstrated adequate rehabilitation or reformation because he did not enter into a formal alcohol treatment program and was four months short of the two years of sobriety she recommended in her report. The DOE Psychiatrist acknowledged that the individual had undergone substantial counseling but remained concerned that he had not entered an alcohol treatment program. The DOE Psychiatrist was adamant in testifying: "If he had maintained two years of sobriety while attending all of those therapies, that will put him at a lower risk of future reckless behavior . . . I will not give him four months less." Tr. at 134-35.

However, having fully considered the record of this case, I have determined that the individual has achieved adequate reformation despite falling four months short of two

^{2/} The DOE Psychiatrist states in her report that the EAP counselor concurred with her recommendation and also encouraged the individual to attend Alcoholics Anonymous (AA) or seek other formal treatment to address his use of alcohol. DOE Exh. 2-1 at 12.

years of sobriety at the time of the hearing. While I accord substantial deference to the opinion of the DOE Psychiatrist, I find that the individual has presented sufficient evidence to overcome the security concerns associated with her diagnoses. The many months of successful counseling the individual has received cannot be ignored. Moreover, I am compelled by the testimony of the individual's wife, his Counselor, and by the individual himself, that the risk of aberrant behavior by the individual, as a result of drinking or ASPD, has now been reduced to an acceptable level.

I found the individual's wife very persuasive in her testimony that the individual has undergone a remarkable change since the September 2003 assault incident. The individual's wife recounted that prior to September 2003, she and the individual had a volatile relationship that was exacerbated by the stress of their having to take custody of their three grandchildren. According to the wife, the individual would go out to his lodge, sometimes as many as five or six times a week, and would come home angry and "we'd have lots of words." Tr. at 17.^{3/} The individual's wife described him as having "a very short fuse" and that "[h]e used to get mad at just little tiny things. I used to walk on egg shells and be afraid." Tr. at 23, 26. While the individual's wife does not believe that the individual has a drinking problem, she believes that the individual's use of alcohol fueled his anger: "I think he drank because he was mad, and I think the drinking made him madder." Tr. at 32.

However, the individual's wife painted a completely different picture of him since he stopped drinking in September 2003, and has gone through successive counseling including one year with his EAP counselor, 24 weeks with the BIP Program, six to eight months with their church counselor, and ongoing sessions with his present Counselor beginning in September 2004. *See* Tr. at 32-35, 60-61; Ind. Exh. 4. The individual's wife testified that "the little things don't bother him anymore[, h]e's able to handle most anything," Tr. at 23, "We've got so much more going for us now than we ever had in 20 years . . . It's wonderful. We're great. . . Now he takes everything with a grain of salt, deals with it like it came. And he's so much more happy, and we laugh and talk so much." Tr. at 28-29.^{4/} The individual's stepson confirmed this depiction of

^{3/} The individual's wife testified that their altercations were typically verbal and not physical. She testified that "once in a while," the individual would "hold me down." Tr. at 36. She recounted an incident ten years ago when the individual picked her up and threw her into their living room. *Id.* She also described another incident approximately six years ago when the individual drove her to the country and threatened to shoot her with a gun. Tr. at 38-39. The individual's wife testified, however, that the individual had not been physically or verbally abusive to their children or grandchildren. Tr. at 37.

^{4/} The individual's wife testified that since reuniting in October 2004, "we've had exactly one misunderstanding, and it was my fault, and he didn't yell at me, he didn't scream, and he said, wait a minute, let's see what's going on here." Tr. at 24.

his parents' relationship since September 2003, testifying that their relationship is "a thousand times better . . . They do things together more as a couple. They're working together more. They're happy. My mom smiles. I never saw [the individual] smile very much, and now he can't get a smile off his face." Tr. at 118.^{5/}

The individual's Counselor offered insight into the individual's decision not to enter an alcohol treatment program, as recommended by the DOE Psychiatrist. The Counselor testified that when he began treating the individual in September 2004, the individual acknowledged that his alcohol use had been raised as a concern by the DOE Psychiatrist and by the EAP counselor. The Counselor stated that he therefore referred the individual to an Alcoholism and Drug Abuse Center (Center) which interviewed the individual and performed a Substance Abuse Subtle Screening Inventory (SASSI) test. Tr. at 92. According to the Counselor, the tests and report provided by the Center indicated that the individual did not have an alcohol problem and did not meet the criteria for alcohol abuse or dependence. *Id.* The Counselor acknowledged that the individual had an alcohol abuse problem in the past and agrees that the individual should maintain his sobriety, but added: "I continued to ask him about his drinking behavior, but just the same, I did not think that it was necessary for him to go into any kind of treatment program and/or AA. I did not think he was a good candidate for that. . . Because he had already been through enough of his own counseling and training through [the EAP counselor] and the BIP program and other counselors, that I think helped him gain insight into his behavior that would precipitate any kind of drink problem." Tr. at 93. The Counselor noted that the treating professional at the Center agreed that the individual did not need any kind of formal alcohol treatment at this time. Tr. at 94. The Counselor asserted that the individual should be deemed to have satisfied the DOE Psychiatrist's criteria for adequate reformation based upon the counseling he has received and 20 months of sobriety, despite having not attended AA or some other alcohol treatment program. Tr. at 105-106.

Regarding the individual's anger issues, the Counselor testified that he has worked to supplement and solidify the anger management techniques that the individual has used successfully since September 2003. The Counselor testified: "[W]hat I did was reinforce some of what he had already begun to learn. My job was really to hold him

^{5/} The individual's close friend and co-worker similarly described the marked change in the individual's personality, stating that "he's mellowed out" and that the individual is "a more clear-minded person" and "he's a family oriented person now." Tr. at 79, 86. The individual and his wife no longer have custody of their grandchildren but care for them on weekends. Tr. at 69.

accountable – at least that’s the job I took on – for the behavioral changes that he had made, starting with [the EAP counselor], and the BIP program, and in the other kinds of counseling that he’s had.” Tr. at 96. The Counselor testified that the individual has been open and receptive, noting that the individual sought help on his own volition following the incident in September 2003. Tr. at 97. The Counselor recommended that the individual remain in counseling with him for an additional three to four months, but gave the individual a “very good” prognosis. In the Counselor’s view, the individual is “motivated to do the necessary changes that will be lasting”^{6/} and “[a]t this point I feel like he would be a low risk for any future problems.” Tr. at 97, 98, 99.^{7/}

Finally, I was impressed with the individual’s candor in discussing his anger issues and the steps he has taken to confront his difficulties, including remaining abstinent from alcohol since September 2003. The individual testified that his relationship with his wife and his ability to control his anger, in general, have greatly benefitted from the months of counseling he has undergone. Tr. at 51-52, 57-59, 61. The individual decided to stop drinking in September 2003 because he recognized that he had “a short fuse” when he consumed alcohol. Tr. at 63. The individual explained that he did not go to AA or other alcohol treatment program initially because he had no difficulty in remaining abstinent, and later because his Counselor advised him that it was unnecessary. Tr. at 64. The individual testified persuasively that he is committed to remaining abstinence from alcohol. Tr. at 53-54.

I therefore conclude that the individual has achieved adequate reformation within the guidelines established by the DOE Psychiatrist, despite not having achieved a full 24 months of sobriety at the time of the hearing.^{8/} Based upon the individual’s 20 months

^{6/} The Counselor elaborated: “That he had an anger problem, that he did lose control at times with her, he admitted that. And he also recognized that part of the precipitating factor would be his drinking, and he knew that it was important to stop.” Tr. at 98.

^{7/} The Counselor, a licensed professional counselor with a doctorate in educational psychology, strongly disagreed with the DOE Psychiatrist’s diagnosis of ASPD based upon his understanding of the *DSM-IV TR*, since the individual had not displayed other kinds of behavior indicative of that disorder, e.g. infidelity, deceitfulness, stealing or lack of remorse. Tr. at 111-12. However, the DOE Psychiatrist stood by her diagnosis, conceding only that personality disorders such as ASPD “have different degrees, they could be mild, moderate, severe.” Tr. at 137.

^{8/} The DOE Psychiatrist essentially recommended one year of abstinence with alcohol treatment, and two years of abstinence without. I am satisfied that 20 months of abstinence, coupled with the substantial counseling the individual has undergone, meet with these requirements. As noted above, the individual’s Counselor did facilitate alcohol testing of the individual and has continued to monitor the individual’s sobriety.

of abstinence, extensive counseling, and demonstrated changes in his behavior, I find that the individual has sufficiently mitigated the concerns of DOE security under Criteria H and J.

B. Criterion L, Unusual Conduct

Under Criterion L, the Notification Letter cites the individual's arrest in September 2003 for assaulting his wife. For the reasons described in the preceding section of this Decision, however, I find that the individual has adequately mitigated the security concerns associated with this conduct.

III. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. §§ 710.8(h), (j) and (l) in suspending the individual's access authorization. For the reasons I have described above, I find that the individual has sufficiently mitigated the associated security concerns. I therefore find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should be restored. The Manager of the DOE Operations Office or the Office of Security may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Fred L. Brown
Hearing Officer
Office of Hearings and Appeals

Date: July 19, 2005